

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-419619-002 DT

06/03/2016

HON. TERESA SANDERS

CLERK OF THE COURT
S. Radwanski
Deputy

STATE OF ARIZONA

MARY-ELLEN WALTER

v.

DARNELL MOSES ALVAREZ (002)

MICHAEL ZIEMBA
ANNA M UNTERBERGER

CAPITAL CASE MANAGER

MINUTE ENTRY

The Court has read and considered defendant's *Motion to Set Parameters for State's Phase 3 Rebuttal Evidence*, the State's response, and the defendant's reply.

The Court intends to follow the guidelines for mitigation rebuttal evidence set forth by the Arizona Supreme Court. For example, in *State v. Leteave*, 237 Ariz. 516, ¶47, 354 P.3d 393 (2015), the Court stated:

During the penalty phase, the state may offer evidence that is relevant to determining if the mitigation is sufficiently substantial to warrant leniency. *See id.* Irrespective of the mitigation evidence presented by the defendant, the state may present evidence of the circumstances of the crime. [*State v. Nordstrom*, 230 Ariz. [110] at 114 ¶10, 280 P.3d [1244] at 1248 (noting that, taken together, A.R.S. §§ 13-751(G) and 13-752(G) “evinced a legislative intent to permit the state to introduce relevant evidence whether or not the defendant presents evidence during the penalty phase”). Thus, the state may “rebut” mitigation - that is, a conclusion that the defendant should be shown leniency - by introducing evidence of the “specific harm caused by the defendant.” *State v. Forde*, 233 Ariz. 543, 572 ¶126, 315 P.3d 1200, 1229 (2014). The state's evidence must not be so unduly prejudicial that it renders the trial fundamentally unfair under the Due Process

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-419619-002 DT

06/03/2016

clause. *State v. Hampton*, 213 Ariz. 167, 179 ¶48, 140 P.3d 950, 963 (2006);
Payne v. Tennessee, 501 U.S.808, 825 (1991).

Thus, in determining what evidence the State will be allowed to present in rebuttal to defendant's mitigation, the Court will determine whether the proffered rebuttal is relevant to show that the defendant should not be shown leniency and is not unfairly prejudicial. As long as the rebuttal is relevant and not unfairly prejudicial, it will be admitted. If the evidence proffered is hearsay, the Court will determine whether defendant had notice and the opportunity to explain or deny the hearsay, as well as whether there are sufficient indicia of reliability to allow its admission.